

*Jouxson-Meyers  
& del Castillo*

Attorneys at Law  
a Limited Liability Law Company

Date/Time: 4/2/2008 8:34:30 AM

To: Hon. Susan Oki Mollway

Fax #: 541-1724

From: Rafael del Castillo

Fax #: (808) 422-8772

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Subject: HCBCG v. HPH, et al., Civil No. CV03--00708 SOM/LEK

Pages: 7

Note: Please see attached status report letter.

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202 California Ave  
Suite 209  
Wahiawa, Hawai'i 96786  
Phone: (808) 621-8806  
Fax: (808) 422-8772

Email Arleen: [ajouxson@physicianslawfirm.com](mailto:ajouxson@physicianslawfirm.com)  
Email Rafael: [rdelecastillo@physicianslawfirm.com](mailto:rdelecastillo@physicianslawfirm.com)

Rafael G. del Castillo, Member

## *Jouxson-Meyers & del Castillo*

Attorneys at Law  
A Limited Liability Law Company

April 2, 2008

Via facsimile

The Honorable Susan Oki Mollway  
U.S. District Court Judge  
District of Hawaii  
300 Ala Moana Blvd.  
Honolulu, Hawaii 96850-0338

Re: Hawaii Children's Blood and Cancer Group vs. Hawai'i Pacific Health, et al.,  
Civil No. CV 03-00708 SOM-LEK

Dear Judge Mollway:

Pursuant to the Court's order to report on the status of the case in First Circuit Court, *Woodruff, et al., vs. Hawai'i Pacific Health, et al.*, Civil No. 02-1-0090-01 (BIA), we write to advise you that the state court granted Defendants' motion for summary judgment on all of Plaintiff HCBCG's HRS Chapter 480 and 481A claims. Defendants conceded the relevant product and geographic market definitions and that Kapi'olani Medical Center for Women and Children possesses monopoly power in pediatric hematology oncology hospital services, which are services essential to the conduct of Plaintiff's HCBCG's practice. Defendants' expert opined that Plaintiff's market share has actually been growing based on data shown to be clearly erroneous. That opinion directly disputed the exhaustively detailed opinion and deposition testimony of Plaintiff's expert that Plaintiff's market share has been substantially diminished by anticompetitive conduct. The court preempted consideration of that dispute, holding that Plaintiff presented "no evidence" Defendants used improper means to exclude competitors, and "no credible" evidence of unfair methods of competition. A copy of the minute order is attached.

HCBCG believes that the judgment would not be sustained on appeal because, inter alia, the court invaded the province of the jury. As this Court is aware, Defendants are among Hawaii's most politically and economically powerful entities. The "no evidence" conclusion is completely at odds with evidence given by competent and informed witnesses who were at substantial risk because Defendants wield such overwhelming power.

As this Court is aware, the state court continued trial three times while Defendants kept chipping away at Plaintiff's market share over the more than three years since this Court stayed further proceedings in this matter, to the point where HCBCG is on the brink of being eliminated. The state court proceeding was thus inadequate to protect HCBCG's interests.

Plaintiff HCBCG thus will move for reopening of these proceedings, pursuant to this Court's October 22, 2004 Order Denying Defendants' Motion To Dismiss, and Granting Defendants' Alternative Motion To Stay Proceedings Pending Resolution Of The Concurrent

307 California Ave  
Suite 209

Wahiawa, Hawai'i 96786

Phone: (808) 621-8806

Fax: (808) 421-8772

Email Arleen: [ajouxso@physicianslawfirm.com](mailto:ajouxso@physicianslawfirm.com)

Email Rafael: [rdelcastillo@physicianslawfirm.com](mailto:rdelcastillo@physicianslawfirm.com)

Rafael G. del Castillo, Member

The Honorable Susan Oki Mollway  
U.S. District Court Judge

April 2, 2008

Re: Hawaii Children's Blood and Cancer Group vs. Hawai'i Pacific Health, et al.,  
Civil No. CV 03-00708 SOM-LEK

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State Of Hawaii Circuit Court Case, at 11: "HCBCG may reopen these proceedings once the state case is completed, or if changes in circumstances render the state proceedings inadequate to protect HCBCG's interests." We do not believe that this Court intended by the foregoing language to stay the case until HCBCG exhausted its right to appeal the state court judgment. Any appeal, whether by Plaintiff or Defendants, should properly be taken in the courts having jurisdiction over the Sherman Act, pursuant to which HCBCG originally chose to pursue its claims. We intend to request, and will appreciate, an expedited review of the aforementioned motion to protect HCBCG's right of review in the event we have misunderstood the meaning of "completed." As Defendants have indicated they intend to file a motion, it appears they will not oppose reopening the case.

This Court has previously denied defense motions to dismiss, and we are not aware that the Court has granted leave for another motion to dismiss. Defendants' only alternative is apparently to seek leave to file a motion for summary judgment. HCBCG would not oppose the opportunity to have this Court review, in light of the policy and precedent governing HCBCG's Sherman Act claims, whether HCBCG is entitled to a jury trial on those claims.

Thank you for your assistance to the parties during the resolution of the State case. Please contact the undersigned if you have any questions.

Very truly yours,



Rafael G. del Castillo

Encl

cc: Kenneth S. Robbins, Esq.

CIVIL MOTIONS CALENDAR  
FIRST CIRCUIT  
TWENTY FIRST DIVISION

DATE: TUESDAY, MARCH 18, 2008  
JUDGE: HONORABLE BERT I. AYABE, JUDGE PRESIDING  
CLERK:  
REPORTER:  
BAILIFF/LAW CLERK: KALI KO WARRINGTON

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2:00 P.M.

ICC 02-1-000090 KELLEY WOODRUFF MD  
VS.  
HAWAII PACIFIC HEALTH ETAL

ARLEEN DOROTHY JOUXSON  
RAFAEL GOODWIN DEL CASTIL  
FOR KELLEY WOODRUFF

KENNETH S ROBBINS  
JOHN-ANDER L MEYER  
WENDY MASAKO YAMAMOTO  
CHARLES ROBERT CHING  
PATRICK HUDSON JONES  
FOR KAPIOLANI MEDICAL SP

SERGIO RUFO  
FOR HAWAII PACIFIC HEALT

JOHN T KOMEIJI  
KAREN YUKIE ARIKAWA  
GREGG MINORU USHIRODA  
FOR DELOITTE & TOUCHE LL

JOHN S NISHIMOTO  
MICHAEL JOHN VAN DYKE  
FOR DENNIS M WARREN

DEFTS HAWAII PACIFIC HEALTH, KAPIOLANI MEDICAL  
SPECIALISTS, KAPIOLANI MEDICAL CTR FOR WOMEN &  
CHILDREN, ROGER DRUE, FRANCES A. HALLONQUIST, NEAL

WINN, M.D. & CHERREL HAMMAR, M.D.'S MTN/SUMMARY  
JDCMT AS TO ALL REMAINING CLAIMS (MVT: K. ROBBINS)  
(FM: 3/14/2008)

\*\*\*\*\*COURT REPORTER MARI-JO DAVIDSON\*\*\*\*\*  
2:02:14-2:58 P.M. CT CLK: A. HONDA  
APPEARANCES: RAPHAEL DEL CASTILLO & ARLENE  
JOUXSON-MEYERS F/ PLAINTIFFS  
KENNETH ROBBINS, JOHN ANDERSON-MEYERS  
& DOUGLAS ROSS F/ DEFENDANTS  
COURT HEARD THE ARGUMENT OF COUNSEL. COURT TOOK

CIVIL MOTIONS CALENDAR  
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THE MATTER UNDER ADVISEMENT.

\*\*\*\*\*<MINUTE ORDER: 03/20/2008>\*\*\*\*\*

THE COURT HAVING REVIEWED THE SUBJECT MOTION AND BEING DULY ADVISED OF THE RECORD AND FILE HEREIN AND FOR GOOD CAUSE APPEARING THEREFORE, THE COURT HEREBY GRANTS DEFENDANTS MOTION FOR SUMMARY JUDGMENT AS TO ALL REMAINING CLAIMS, FILED FEBRUARY 15, 2008.

AS TO COUNT I (INJUNCTIVE RELIEF), THE COURT FINDS THAT THERE ARE NO GENUINE ISSUES OF MATERIAL FACT IN DISPUTE THAT PLAINTIFFS WILL SUFFER IRREPARABLE HARM IF THE INJUNCTIVE RELIEF IS NOT GRANTED. THE COURT DECLINES TO IMPOSE INJUNCTIVE RELIEF TO RESTORE "TEAM CARE" AS REQUESTED BY PLAINTIFFS SINCE NO EVIDENCE HAS BEEN PRESENTED TO WARRANT SUCH ACTION BY THE COURT. THUS, THE COURT GRANTS SUMMARY JUDGMENT AS TO COUNT I.

AS TO COUNTS II AND III (VIOLATION OF HRS 480-4(A), 480-4(B) AND 480-6), THE COURT FINDS THAT THERE ARE NO GENUINE ISSUES OF MATERIAL FACT IN DISPUTE THAT DEFENDANTS ENGAGED IN ACTIONS TO RESTRAIN TRADE AND COMMERCE, CONTROL PRICES OR REFUSE TO DEAL IN VIOLATION OF HRS 480-4 OF 480-6. THERE WAS NO EVIDENCE PRESENTED BY PLAINTIFFS THAT DEFENDANTS CONDUCT WAS ANTICOMPETITIVE OR OTHERWISE EXCLUDED COMPETITORS BY IMPROPER MEANS. IN ADDITION, WITH RESPECT TO HRS 480-4, NO EVIDENCE WAS PRESENTED THAT DEFENDANTS WERE PART OF A CONTRACT OR CONSPIRACY TO RESTRAIN TRADE OR COMMERCE. THUS, THE COURT GRANTS SUMMARY JUDGMENT AS TO COUNTS II OR III.

AS TO COUNT IV (VIOLATION OF HRS 480-2), THE COURT FINDS THAT THERE ARE NO GENUINE ISSUES OF MATERIAL FACT IN DISPUTE THAT DEFENDANTS ENGAGED IN UNFAIR METHODS OF COMPETITION IN VIOLATION OF HRS 480-2. THE COURT FINDS THAT PLAINTIFFS HAVE FAILED TO PRESENT ANY CREDIBLE EVIDENCE THAT DEFENDANTS CONDUCT AND ACTIONS WERE UNLAWFUL AND UNFAIR METHODS OF COMPETITION. THUS, THE COURT GRANTS SUMMARY JUDGMENT AS TO COUNT IV.

CIVIL MOTIONS CALENDAR  
FIRST CIRCUIT  
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-----PAGE 1

2:00 P.M.

ICC 02-1-000090 KELLEY WOODRUFF MD  
VS.  
HAWAII' I PACIFIC HEALTH ETAL

ARLEEN DOROTHY JOUXSON  
RAFAEL GOODWIN DEL CASTIL  
FOR KELLEY WOODRUFF

KENNETH S ROBBINS  
JOHN-ANDER L MEYER  
WENDY MASAKO YAMAMOTO  
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GREGG MINORU USHIRODA  
FOR DELOITTE & TOUCHE LL

JOHN S NISHIMOTO  
MICHAEL JOHN VAN DYKE  
FOR DENNIS M WARREN

\*\*\*CONTINUED MINUTES OF 3/18/2008\*\*\*

AS TO COUNTS V AND VI (VIOLATION OF HRS 480-9), THE COURT FINDS THAT THERE ARE NO GENUINE ISSUES OF MATERIAL FACT IN DISPUTE THAT DEFENDANTS ENGAGED IN ANTICOMPETITIVE CONDUCT IN VIOLATION IN HRS 480-9. THERE WAS NO EVIDENCE PRESENTED BY PLAINTIFFS THAT DEFENDANTS CONDUCT OF REFERRING PATIENTS TO KMS PEDIATRIC HEMATOLOGY-ONCOLOGISTS RATHER THAN HCBCG PEDIATRIC HEMATOLOGY-ONCOLOGISTS AND EXCLUDING PLAINTIFFS FROM "TEAM CARE" IS ANTICOMPETITIVE OR OTHERWISE UNLAWFUL. THUS, THE COURT GRANTS SUMMARY JUDGMENT AS TO COUNTS V AND VI.

AS TO COUNT VII (VIOLATION OF HRS 481A), THE

CIVIL MOTIONS CALENDAR  
FIRST CIRCUIT  
TWENTY FIRST DIVISION

DATE: TUESDAY, MARCH 18, 2008  
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BAILIFF/LAW CLERK: KALI KO WARRINGTON

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COURT FINDS THAT THERE ARE NO GENUINE ISSUES OF MATERIAL FACT IN DISPUTE THAT DEFENDANTS ENGAGED IN DECEPTIVE TRADE PRACTICES IN VIOLATION OF HRS 481A. THE COURT FINDS THAT PLAINTIFFS FAILED TO PRESENT ANY EVIDENCE TO SUPPORT THEIR POSITION THAT THE NAME "KAPIOLANI CHILDREN'S BLOOD AND CANCER GROUP" CAUSES A LIKELIHOOD OF CONFUSION OR MISUNDERSTANDING WITH THE NAME "HAWAII CHILDREN'S BLOOD AND CANCER GROUP OR IS OTHERWISE DECEPTIVE. THUS, THE COURT GRANTS SUMMARY JUDGMENT AS TO COUNT VII.

COUNSEL FOR DEFENDANTS TO PREPARE THE ORDER.  
\*\*\*\*\*

A COPY OF THE MINUTE ORDER SHALL BE PLACED IN THE COURT JACKETS OF KENNETH ROBBINS AND RAFAEL DEL CASTILLO.